IN THE COURT OF CRIMINAL APPEALS OF TENNESSEE
AT KNOXVILLE
January 24, 2006 Session

STATE OF TENNESSEE v. RONNIE DALE GENTRY

Appeal from the Criminal Court for Loudon County
No. 10711 E. Eugene Eblen, Judge

No. E2005-01133-CCA-R3-CD Filed April 4, 2006

The state appeals from the Loudon County Criminal Court's dismissal of the indictments against the defendant, Ronnie Dale Gentry, for driving under the influence (DUI), violation of the implied consent law, driving on a revoked license, and speeding pursuant to Rule 8(a) of the Tennessee Rules of Criminal Procedure requiring mandatory joinder. We reverse the judgments of the trial court.

Tenn. R. App. P. 3 Appeal as of Right; Judgments of the Criminal Court Reversed and Case Remanded

JOSEPH M. TIPTON, J., delivered the opinion of the court, in which GARY R. WADE, P.J., and JAMES CURWOOD WITT, JR., J., joined.

Paul G. Summers, Attorney General and Reporter; John H. Bledsoe, Assistant Attorney General; J. Scott McCluen, District Attorney General; and Frank A. Harvey, Assistant District Attorney General, for the appellant, State of Tennessee.

Joe H. Walker, District Public Defender, and Walter B. Johnson, II, Assistant Public Defender, for the appellee, Ronnie Dale Gentry.

OPINION

This appeal relates to the charges against the defendant that arose after a traffic stop was initiated in Loudon County and ended in Blount County. The following account of events was provided by Deputy William Patterson in the complaints he filed against the defendant in Loudon County for DUI, violation of the implied consent law,[1] driving on a revoked license, felony evading arrest, aggravated assault, criminal impersonation, and speeding.

---

[1]The violation of the implied consent law is a Class A misdemeanor in this case. Count 2 of the Loudon County indictment for driving on a revoked license states that the defendant's license was revoked because of a conviction for driving while intoxicated under Tennessee Code Annotated section 55-10-401. See T.C.A. § 55-10-406(a)(3).

> On 2/3/2003 at approx. 2:11 p.m. while running radar on 411S I observed a vehicle traveling at 64 mph in a 50 mph speed zone. I made a traffic stop on the vehicle. After noticing a strong odor of an alcoholic beverage on the person of the driver of the vehicle Ronnie Gentry I had Mr. Gentry attempt several filed sobriety tasks which he could not complete properly[.] I advised Mr. Gentry he was under arrest. While attempting to place Mr. Gentry under arrest he struggled with me and as I used my radio to call for assistance Mr. Gentry got back into his vehicle and as I attempted to remove him he drove off. The vehicle struck my right leg. I got into my vehicle and while trying to get Mr. Gentry stopped again I noticed him almost strike several vehicles. When Mr. Gentry was first stopped he produced a TN driver[']s license with the name James Carl Gentry. After being stopped the second time[,] a driver[']s license in the name Ronnie Dale Gentry with the same person in the photo was found on Mr. Gentry's person. After checking NCIC[,] I found the second driver[']s license which was the correct one for this person was revoked for driving under the influence. Mr. Gentry was placed under arrest and transported to the Loudon County jail where he refused to take a test to determine his blood alcohol content.

At the preliminary hearing in Loudon County General Sessions Court, the court bound to the Loudon County Grand Jury the charges for DUI, violation of the implied consent law, driving on a revoked license, and speeding. The court dismissed the charges of aggravated assault, felony evading arrest, and criminal impersonation, because these three charges occurred completely in Blount County.

On March 7, 2003, Deputy Patterson obtained warrants in Blount County alleging the same facts as the Loudon County warrants for aggravated assault, felony evading arrest, and criminal impersonation that had been dismissed for lack of venue.[2] On August 11, 2003, the Loudon County Grand Jury indicted the defendant for fifth offense DUI, seventh offense driving on a revoked license, violation of the implied consent law, and speeding. Two days later, the Blount County General Sessions Court bound to the grand jury the charges of aggravated assault, felony evading arrest, and criminal impersonation. The Blount County Grand Jury returned indictments on all three charges. The defendant pled guilty in Blount County to felony evading arrest and criminal impersonation, while the Loudon County charges were pending. The aggravated assault count was remanded to the Blount County General Sessions Court for dismissal. The Blount County Criminal Court imposed a three-year sentence as a Range II offender with nine months to serve for the felony evading arrest count and a six-month sentence for the criminal impersonation count to be served concurrently. The defendant received jail credit for the time he served in Loudon County.

[2]Deputy Patterson placed the incorrect date of March 2, 2003, on the warrants obtained in Blount County. The date of the offenses on the Loudon County warrants was February 3, 2003.

The defendant filed a motion to dismiss in Loudon County alleging that mandatory joinder under Rule 8(a) of the Tennessee Rules of Criminal Procedure required all of the charges to be brought in Blount County. The trial court held a hearing on the defendant's motion to dismiss and entertained the arguments of counsel. No witnesses testified. At the end of the hearing, the trial court granted the defendant's motion and dismissed the charges of fifth offense DUI, seventh offense driving on a revoked license, violation of the implied consent law, and speeding.

The state asserts the trial court erred in dismissing the defendant's indictment under Rule 8(a). The state contends the purpose of Rule 8(a) is to prevent deliberate "saving back" of charges, which did not happen in this case. The state asserts that Rule 8(a) only applies if the "appropriate prosecuting official" knew about all of the charges at the time of the indictment and that Loudon County and Blount County have two different prosecuting officials. The state asserts there is not sufficient evidence to show that the appropriate prosecuting official in Blount County knew about all the charges brought in Loudon County. It also asserts Rule 8(a) only applies if all of the charges are within the jurisdiction of a single court. It contends that all of the charges were not within the jurisdiction of Loudon County and that the single court inquiry must focus on Loudon County as the "single court" because those are the charges under review. The state cites King v. State, 717 S.W.2d 306, 308 (Tenn. Crim. App. 1986), to support its position, claiming a "subsequent indictment is permitted after the defendant has been tried on the first charge . . . if the second charge is not within the jurisdiction of the same court that tried the defendant."

The defendant asserts that the trial court properly dismissed the indictment under Rule 8(a). The defendant asserts Rule 8(a) does not require that the state intentionally save back charges for the rule to apply. The defendant asserts the requirement that a single court have jurisdiction is met because Blount County had venue and jurisdiction over all the charges. The defendant contends King allows for a subsequent indictment if the prosecutor has no knowledge of the charges at the time of the indictment or if the second charge is not within the jurisdiction of the court. The defendant asserts that the charges were all part of the same criminal episode and that the offenses were known to the prosecuting official, Deputy Patterson, requiring that all of the charges be brought in Blount County.

The trial court's findings of fact are binding upon this court unless evidence contained in the record preponderates against them. State v. Baird, 88 S.W.3d 617, 620 (Tenn. Crim. App. 2001). However, the appellate court is not bound by the trial court's conclusions of law. State v. Simpson, 968 S.W.2d 776, 779 (Tenn. 1998). The trial court's application of the law to the facts is reviewed de novo by this court. State v. Daniel, 12 S.W.3d 420, 423 (Tenn. 2000). In this case, the trial court heard only the arguments of counsel and no testimony of witnesses. The facts are not disputed in this case, but our review of the facts is limited to the statements made by Deputy Patterson in the complaints he filed. Therefore, the trial court's conclusion that the mandatory joinder rule required dismissal of the indictments derived from an application of the law to the undisputed facts, and our review is de novo.

Rule 8(a) of the Tennessee Rules of Criminal Procedure states

> Mandatory Joinder of Offenses. – Two or more offenses shall be joined in the same indictment, presentment, or information, with each offense stated in a separate count, or consolidated pursuant to Rule 13 if the offenses are based upon the same conduct or arise from the same criminal episode and if such offenses are known to the appropriate prosecuting official at the time of the return of the indictment(s), presentment(s), or information(s) and if they are within the jurisdiction of a single court. A defendant shall not be subject to separate trials for multiple offenses falling within this subsection unless they are severed pursuant to Rule 14.

The first requirement of Rule 8(a) is that the offenses are based upon the same conduct or arise from the same criminal episode. If the first requirement is not met, it is unnecessary to review the second or third requirements of the mandatory joinder rule. A criminal episode has been defined as relating "'to several distinct offenses which arise out of separate actions or conduct but which occur in a closely connected series of events in place and time.'" Baird, 88 S.W.3d at 620 (quoting David Raybin, Tennessee Criminal Practice and Procedure § 17.23 (1984)). A "criminal episode" has also been defined by the American Bar Association Standards for Criminal Justice:

> "Single criminal episode offenses normally are generated by separate physical actions. The actions may be committed by separate defendants. In other respects, however, they are similar to same conduct offenses: they occur simultaneously or in close sequence, and they occur in the same place or in closely situated places. A critical characteristic of single episode offenses, particularly in cases involving otherwise unrelated offenses or offenders, is the fact that proof of one offense necessarily involves proof of the others."

Baird, 88 S.W.3d at 620-21 (quoting ABA Standards for Criminal Justice § 13-1.2 Commentary (1986)) (concluding that a second indictment alleging gambling between January and June 1999 arose from the same "criminal episode" as the first indictment alleging gambling between August and December 1998 and that failing to bring the indictments at the same time violated the mandatory joinder rule); see also State v. Frazier, 683 S.W.2d 346, 350 (Tenn. Crim. App. 1984) (finding that two separately indicted offenses of presenting obscene live performances of two different dancers on one night in the same nightclub were part of the "same criminal episode"); but cf. State v. Dunning, 762 S.W.2d 142, 144 (Tenn. Crim. App. 1988) (concluding the "separate acts of selling cocaine to different officers from two distinct law enforcement investigations on different days is not a single action").

At the hearing on the motion to dismiss, both the state and the defendant acknowledged that the offenses were closely connected in place and time. The state told the trial court, "[T]here wasn't a sense of a break in this case, an intervening event." The defendant argued, "[H]e has one criminal

episode proceeding in two counties. . . . [T]he incident that began in Loudon County occurred on into Blount County where the defendant was stopped." All of the offenses arose from Deputy Patterson's stopping the defendant for speeding, conducting field sobriety tests, and telling the defendant he was under arrest. The defendant continued in his criminal episode by attempting to flee and committed the remaining offenses. We conclude the first requirement of Rule 8(a) is satisfied.

The second requirement of Rule 8(a) is that the offenses are "known to the appropriate prosecuting official at the time of the return of the indictment." Tenn. R. Crim. P. 8(a). The state asserts the evidence is insufficient to support a finding that the appropriate prosecuting official in Blount County knew about all the charges. We note that Deputy Patterson obtained the warrants in both Loudon County and Blount County and is the prosecutor named in both the Loudon County indictment and the Blount County indictment. The complaints Deputy Patterson obtained in Blount County for felony evading arrest and criminal impersonation would have alerted the prosecutor to the offenses of speeding, DUI, and driving on a revoked license.

> Felony Evading Arrest to wit:
>
> > Affiant states on the above said date while on routine patrol he performed a traffic stop on the defendants vehicle for speeding (64-50), after informing the defendant he was under arrest for D.U.I. the defendant jumped into his vehicle and fled the scene and was finally stopped after approximately 7 miles. All of the above occurred in Blount County Tennessee.
>
> Criminal Impersonation to wit:
>
> > Affiant states on the above said date while on patrol he stopped the defendants vehicle on U.S. Hwy 411 South for speeding (64-50). Affiant further states upon speaking to the defendant he presented a driver[']s license of James Carl Gentry DOB-5-21-59, §# 415-11-4158, and license number of 52856060, defendant did this because his own license is revoked in Tennessee, and he was attempting to prevent his [own] arrest for said driving offense. All of the above occurred in Blount County Tennessee.

Additionally, if the prosecutor had investigated the DUI charge referred to in the felony evading arrest warrant, the prosecutor would have been alerted to the violation of the implied consent law. See State v. Dominy, 67 S.W.3d 822, 825 (Tenn. Crim. App. 2001) (concluding the mandatory joinder rule applied because the prosecutor knew the "salient facts" when the indictment was returned); King v. State, 717 S.W.2d 306, 308 (Tenn. Crim. App. 1986) (stating that the portion of the mandatory joinder rule relating to the knowledge of the "appropriate prosecuting official" is not satisfied when the district attorney is not aware of the fact that the subsequent offense was committed); cf. Dunning, 762 S.W.2d at 144 (concluding that joinder was not mandatory where there

was "no showing that either [the investigators or the attorney general's office] had knowledge of the other's actions in regard to the defendant").

"Whether the offense is unknown to the prosecutor is a question of his or her knowledge of 'all of the facts.'" Dominy, 67 S.W.3d at 825 (quoting King, 717 S.W.2d at 307). In the present case, the prosecutor who sought the indictments would have had knowledge of the salient facts of the offenses upon reading the felony evading arrest, criminal impersonation, and aggravated assault warrants. However, the record is devoid of any evidence showing that the prosecutor read these warrants or that Deputy Patterson informed the prosecutor of the underlying offenses before the return of the Blount County indictments. We conclude that the requirement that the appropriate prosecuting official know about the offenses is not established by the facts in the record.

The third requirement of Rule 8(a) is that the offenses are "within the jurisdiction of a single court." Tenn. R. Crim. P. 8(a). Rule 18 of the Tennessee Rules of Criminal Procedure provides

> (a) . . . offenses shall be prosecuted in the county where the offense was committed.
> (b) If one or more elements of an offense are committed in one county and one or more elements in another, the offense may be prosecuted in either county.
> (c) Offenses committed on the boundary of two (2) or more counties may be prosecuted in either county.

Id. 18 (a)-(c).

At the hearing, the state conceded that "[t]he charges brought in Blount County could not be prosecuted [in Loudon County]." We agree with the state's concession that all of the charges could not have been prosecuted in Loudon County. Therefore, we must determine if all of the charges could have been prosecuted in Blount County in order to satisfy the third requirement of Rule 8(a). It is undisputed that Deputy Patterson initiated his stop of the defendant in Loudon County and effected the stop in Blount County. The defendant committed the offenses of aggravated assault, evading arrest, and criminal impersonation in Blount County only. The DUI and driving on a revoked license were continuing offenses that were committed while the defendant was driving in both Loudon County and Blount County.

The speeding offense occurred in Loudon County and may or may not have continued into Blount County. Deputy Patterson did not testify at the hearing, and the record is devoid of facts showing if the defendant continued speeding after he crossed the county line. If the defendant was no longer speeding upon crossing the Blount County line, Loudon County would have exclusive jurisdiction over the speeding offense.

Additionally, it is unclear from the facts where the violation of implied consent law occurred. The record does not reflect where the defendant was when he refused to submit to the breathalyzer

test. It does not reflect if the defendant was asked to submit to the test when he was stopped in Blount County or if the defendant was asked once he arrived at the Loudon County jail. We note that the implied consent form states that the defendant was arrested in Loudon County, however this is in direct contradiction with the few facts that are in the record which show the defendant was placed under arrest in Blount County. We conclude that because the record is unclear as to whether the speeding offense continued into Blount County and unclear as to where the violation of the implied consent law occurred, the third requirement that all of the offenses occur within the jurisdiction of a single court is not established by the record.

We conclude that because the facts in the record fail to establish that the appropriate prosecuting official knew of all of the charges or that all of the offenses were within the jurisdiction of a single court, Rule 8(a) does not require that these offenses be joined for prosecution. Therefore, the trial court erred in dismissing the indictments.

CONCLUSION

Based on the foregoing and the record as a whole, the judgments of the trial court are reversed and remanded for further proceedings.

_____

JOSEPH M. TIPTON, JUDGE